

Breen Deposition Excerpts

1 J. Breen

2 A Baldwin Midwifery Services.

3 Q Where is Baldwin Midwifery
4 Services located?

5 A Baldwin, New York.

6 Q How long have you been running
7 that practice? Approximately is fine.

8 A About 30 years.

9 Q And that's something I should
10 have said as well. If there is any answer
11 that you're not sure of, you can always
12 tell me you don't know or you're not sure.
13 But if you're giving me an estimate or an
14 approximation, please just let me know.
15 Just don't guess.

16 A Right.

17 Q What is the highest level of
18 formal education that you've completed?

19 A I have a masters degree.

20 Q What is that masters degree in?

21 A In maternal child health.

22 Q Where did you get the masters
23 degree?

24 A Columbia.

25 Q What year did you graduate?

September 30, 2019

9

1 J. Breen

2 A 1984.

3 Q Did you receive any other
4 secondary education other than the masters
5 degree in 1984?

6 A No.

7 Q I'm sorry, what was the name of
8 the degree that you received?

9 A It was a masters in maternal
10 child health. It was the School of
11 Nursing.

12 Q Are you represented by counsel
13 today?

14 A I am not.

15 Q Did you do anything to prepare
16 for your deposition today?

17 A Of course.

18 Q What did you do to prepare?

19 A I reviewed the patient's chart
20 and I reviewed some of the research that
21 has been done on vaccines, hospital
22 practice, mass marketing of big pharma,
23 like that.

24 Q Is that all you did to prepare
25 today?

1 J. Breen

2 are, the findings were.

3 Q When you say what the findings
4 were, you mean the findings of those
5 individual studies that you were reviewing?

6 A Right.

7 Q Have you received any other --
8 going back to your education, have you
9 received any other certificates of learning
10 or anything other than the degree that we
11 talked about post high school?

12 A Probably not formal, formal
13 education, but I've done many types of, you
14 know, adjunct medical holistic medicine
15 practices.

16 Q When you say you've done
17 holistic medicine practices, you've taken
18 classes related to holistic medicine
19 practices?

20 A Courses, a lot of coursework.

21 Q Can you describe some of that
22 coursework?

23 A In homeopathy, in breast
24 feeding, in hormone management, neonatal
25 resuscitation, adult CPR.

1 J. Breen

2 Ms. LaBarbera about the flu vaccine?

3 A At some point, yes.

4 Q Do you recall when that was?

5 A Well, my note says it was 12/5.

6 Q Do you recall who brought the
7 topic up?

8 A I'm certain I did not.

9 Q Why are you certain that you did
10 not bring the topic up?

11 A I would never bring that up at a
12 prenatal visit. I would never talk about a
13 flu vaccine at a prenatal visit unless the
14 patient asked me.

15 Q Okay. I'll ask that you put
16 Breen 4 to the side, please.

17 Did Ms. LaBarbera ask you?

18 A She did.

19 Q Do you recall that conversation?

20 A Not exactly.

21 Q Do you recall anything related
22 to that conversation?

23 A Well, no doubt she told me that
24 the hospital that she was employed at was
25 requiring her to get a flu vaccine.

J. Breen
September 30, 2019

30

1 J. Breen

2 Q What else did she say about it,
3 if anything?

4 A She was probably asking me my
5 opinion.

6 Q Did you provide your opinion?

7 A I did.

8 Q I'm going to provide you with
9 another document that we'll mark as Breen
10 Exhibit 5.

11 (Exhibit 5, Document given to
12 LaBarbera, was marked for
13 Identification, as of this date.)

14 BY MS. GAROFALO:

15 Q Ms. Breen, do you recognize this
16 document?

17 A I do.

18 Q What do you recognize it to be?

19 A This is the document given to
20 Ms. LaBarbera from the health service of
21 Winthrop Hospital.

22 Q We were speaking about
23 Ms. LaBarbera's conversation with you
24 related to the flu vaccine.

25 A Yes.

1 J. Breen

2 A Yes, it is.

3 Q Is there anything on this page
4 that is not your handwriting that's
5 handwritten?

6 A Yes, where it says CNM obliquely
7 at the bottom.

8 Q So the handwriting that's sort
9 of off to the side, right-hand corner, that
10 isn't on any lines?

11 A Right.

12 Q Okay.

13 When did you first see this
14 document?

15 A When did I first see it?

16 Q Yes.

17 A Apparently on 11/14.

18 Q And this is your handwriting,
19 you said that there is no evidence proving
20 the safety of the influenza vaccine for
21 pregnant woman or her fetus?

22 A Yes.

23 Q Do you believe that to be the
24 case?

25 A Yes.

1 J. Breen

2 Q When did you first come to that
3 conclusion?

4 A When I looked at the package
5 insert.

6 Q What package insert?

7 A For the flu vaccine.

8 Q Do you recall which package
9 insert you looked at for the flu vaccine?

10 A It was for the flu vaccine that
11 year.

12 Q Do you recall if it had a
13 specific name?

14 A No. It was the package insert
15 regarding the influenza vaccine for that
16 year and I don't have a copy of that.

17 Q And --

18 A So I don't know.

19 Q You said that you first came to
20 that conclusion when you looked at the
21 influenza package or insert for that flu
22 vaccine of that year.

23 Do you recall when you looked at
24 the flu vaccine insert?

25 A No.

1 J. Breen

2 given instruction on how to seek
3 clarification.

4 BY MS. GAROFALO:

5 Q I'm happy to rephrase the
6 question.

7 A Yeah, thank you.

8 Q Prior to filling out the form
9 that we just talked about, which is Breen
10 5, I believe, where you state there is no
11 evidence proving the safety of the
12 influenza vaccine for the pregnant woman or
13 her fetus, I believe you testified that you
14 based that conclusion upon the flu vaccine
15 insert that you requested from CVS Pharmacy
16 or that you googled online, correct?

17 A Right, right.

18 Q Was there anything else on which
19 you based your statement on this document?

20 A You know, I think this probably
21 has come up from time to time, you know, in
22 my career talking about vaccines and
23 especially the flu vaccine. It's kind
24 of -- it comes up every year pretty much in
25 conversation in my profession or with my

1 J. Breen

2 patient contacts or not. So I'm pretty
3 well attuned to, you know, vaccines and
4 their uses, you know, with the population,
5 public health.

6 Q Okay.

7 A So it's nothing new.

8 Q Did you look at any evidence
9 related to the safety of flu vaccine with
10 pregnant women?

11 A I could have. I can't really
12 tell you that right for a fact that I
13 absolutely knew that or didn't know that,
14 but.

15 Q Do you recall looking at
16 anything related to the evidence of safety
17 in pregnant women prior to filling this
18 document out?

19 A I don't recall, but it seems
20 like I should have come across information
21 regarding vaccines that were being
22 recommended to pregnant women.

23 Q Did having to fill this form
24 out, did that trigger you to look into any
25 other research other than the flu vaccine

1 J. Breen

2 A I believe it's a political
3 organization.

4 Q Can you describe what you mean
5 by that?

6 A That it's not necessarily
7 representing factual information.

8 Q On what do you base that
9 opinion?

10 A Whistleblowers, for one thing.

11 Q Can you describe what you mean
12 by that?

13 A There are people that work for
14 that administration that have made note of
15 the fact that research was ignored or
16 covered up by the CDC, formerly.

17 Q Did any of that research relate
18 to the flu vaccine?

19 A No.

20 Q In your professional capacity,
21 do you ever have the occasion to consider
22 and follow recommendations from the CDC?

23 A Well, I always would consider
24 their recommendations.

25 Q Are you familiar with the Zika

1 J. Breen

2 Gynecologists, which I will refer to as the
3 ACOG?

4 A Yes, I am.

5 Q What do you understand it to be?

6 A It's a formal organization that
7 OB/GYNs belong to.

8 Q Does this organization at times
9 produce guidance related to pregnant women?

10 A Yes.

11 Q Have you ever followed or
12 referred to the ACOG guidance?

13 A Yes.

14 Q Do you understand their guidance
15 to generally be reputable?

16 A No.

17 Q Why?

18 A Well, a doctor doesn't always
19 know best.

20 Q Can you explain what you mean by
21 that?

22 A OB/GYNs are surgeons. It's a
23 surgical subspecialty. They're probably
24 all wonderful men, to begin with, and
25 women. They don't always do things in the

1 J. Breen

2 best interests of women and their families.

3 So I review just -- everything
4 that they do, I review with some skepticism

5 Q But you have, at times, followed
6 their guidance, the ACOG's guidance?

7 A Have I followed their guidance?
8 They're not the primary people that I get
9 guidance from, no.

10 Q Not the primary, but at times
11 you do follow the guidance that they issue?

12 A Yes.

13 Q Are you familiar with the
14 American Academy of Pediatrics?

15 A Oh, yes.

16 Q What do you understand the
17 American Academy of Pediatrics to be?

18 A So it's the formal organization
19 that pediatricians belong to.

20 Q Do they sometimes issue
21 recommendations and guidance?

22 A They do.

23 Q Have you ever followed or
24 referred to their recommendations or
25 guidance?

1 J. Breen

2 A Yes.

3 Q Back to Exhibit Breen 5, which
4 is NYU Winthrop 170 through 173, did
5 anybody from NYU Winthrop ever contact you
6 to discuss this exemption request?

7 A Yes.

8 Q Do you recall who that was?

9 A It was a nurse from the health
10 service or someone from the health service.
11 I'm not sure she was a nurse, but I thought
12 she told me she was a nurse.

13 Q How did she contact you?

14 A She called me up at my office on
15 the phone.

16 Q Do you recall when that
17 conversation occurred?

18 A No, not exactly.

19 Q Do you recall approximately when
20 it occurred?

21 A Sometime after I submitted this
22 form, I think. It must have been after I
23 submitted this form.

24 Q Do you recall approximately how
25 long the conversation lasted?

1 J. Breen

2 A Probably less than 5 minutes.

3 Q Can you describe that
4 conversation for me?

5 A I think she wanted some
6 clarifications to why I gave -- I think she
7 was, you know, informing me that pregnancy
8 was not an exemption for getting the flu
9 vaccine at Winthrop.

10 Q Other than informing you that
11 pregnancy was not sufficient to get an
12 exemption for the flu vaccine at Winthrop,
13 was there anything else in that
14 conversation?

15 A I think she told me that the
16 doctors there recommended the flu vaccine
17 for pregnant women and that, you know, that
18 should be credible, you know, for me. And
19 I said it wasn't.

20 Q Was there anything else in that
21 conversation?

22 A I just stated what I wrote in
23 the form, that there's no research to prove
24 that the -- that there's -- you know, that
25 the flu vaccine is safe for pregnancy.

1 J. Breen

2 Q Did the nurse from Winthrop ask
3 you any questions?

4 A I don't think so. I think she
5 was just trying to talk me into rescinding
6 my exemption.

7 Q Did you ask her any questions?

8 A I don't think I did.

9 Q You started earlier to say that
10 she was asking -- she being the nurse from
11 NYU Winthrop -- was asking for a
12 clarification. What clarification was she
13 asking for?

14 A Probably why I was giving my
15 patient an exemption when none of the
16 doctors would have given her an exemption.
17 It wasn't a known, you know -- it wasn't an
18 acceptable exemption in their eyes.

19 Q How was the call with Ms. Davis
20 resolved? Was there any discussion related
21 to next steps?

22 A Ms. Davis?

23 Q I'm sorry, the nurse that you
24 spoke with from Winthrop. How did that
25 call resolve? Was there a discussion

1 J. Breen

2 related to next steps?

3 A I don't believe so.

4 Q And at some point, though, you
5 did submit another form, right?

6 A I did?

7 Q You did? You're agreeing with
8 me or is that a question?

9 A No, it's a question.

10 Q Let me give you another document
11 here. This will be Breen 8.

12 (Exhibit 8, Bates NYU Winthrop
13 174 through 177, was marked for
14 Identification, as of this date.)

15 BY MS. GAROFALO:

16 Q This document is Bates stamped
17 NYU Winthrop 174 through 177.

18 A Okay.

19 Q Do you recognize this document,
20 Ms. Breen?

21 A Isn't this the same document?
22 It looks like the same document to me.

23 Q Well, let's start at NYU 174,
24 NYU Winthrop 174.

25 A Right.

1 J. Breen

2 sent?

3 A Well, it seems, though -- I mean
4 there are two different cover sheets. So
5 one was to NYU and one was to Employee
6 Health -- I mean one was to NYU Winthrop
7 and one was to Employee Health. I don't
8 know why it was sent twice.

9 Q Is that handwriting on Breen 8
10 your handwriting?

11 A No.

12 Q Do you know whose handwriting it
13 is?

14 A It's my receptionist.

15 Q Okay.

16 I'm going to hand you another
17 document that we will mark as Breen 9.

18 (Exhibit 9, Phone Call Record,
19 was marked for Identification, as of
20 this date.)

21 BY MS. GAROFALO:

22 Q Do you recognize this document?

23 A Oh, yes. Okay.

24 Q What do you recognize it to be?

25 A So it looks like it's recording

1 J. Breen

2 a phone call from Marlene from Winthrop
3 Employee Health and she was advocating for
4 the flu vaccine and then obviously stated
5 that the patient was not exempt.

6 Q And Marlene, is that the
7 individual that we were just discussing
8 when you were describing the phone call
9 that you received from NYU Winthrop?

10 A I don't know. Marlene, a PA.

11 Q Do you believe that this is an
12 additional conversation that occurred?

13 A I think it might have been,
14 yeah.

15 Q So you think there may have been
16 two conversations?

17 A There may have been two
18 conversations, right.

19 Q Other than those two
20 conversations, do you recall speaking to
21 anybody else from NYU Winthrop?

22 A No. I don't recall.

23 Q Other than the form, the two
24 forms that we spoke about, Breen 5 and
25 Breen 8, which was the same form but faxed

1 J. Breen

2 MR. OSTROVE: I'm going to ask a
3 few questions.

4 EXAMINATION BY

5 MR. OSTROVE:

6 Q So you talked a little bit
7 earlier about your opinion regarding, your
8 opinion that you wrote on exhibit -- I
9 guess it doesn't matter what exhibit it
10 was. I'm going to start the question over.

11 So you had informed the hospital
12 on one of the exhibits we looked at today
13 that you did not think that Ms. LaBarbera
14 should have the flu vaccine, correct?

15 MS. GAROFALO: Objection.

16 A You're asking me now what?

17 Q Sure.

18 I'm asking you about, in
19 general, it doesn't matter what you put on
20 the form, when did you form an opinion, in
21 general, about whether or not pregnant
22 women should take the flu vaccine?

23 MS. GAROFALO: Objection.

24 BY MR. OSTROVE:

25 Q You can answer even when there's

1 J. Breen

2 an objection.

3 A So Ms. LaBarbera did not want to
4 take the flu vaccine. I agreed with her.

5 Q Okay.

6 But in agreeing with her, did
7 you have your own opinion about why you
8 agreed with her?

9 A Yes.

10 Q And can you explain what your
11 opinion was?

12 A Because there was no known
13 safety about any vaccine or medication
14 that -- nothing prescribed for women during
15 pregnancy is known to be safe.

16 Q What do you mean by that?

17 A Well, there's no known safety
18 of, you know, medications for the pregnant
19 women or their fetus. There's nothing
20 that's safe to be injected for a pregnant
21 women. There's nothing. There's
22 advantages and disadvantages to everything,
23 but there's nothing known to be safe.

24 Q Okay.

25 With respect to the flu vaccine,

1 J. Breen

2 did you know that prior to Allison

3 questioning you about it?

4 A Yes.

5 Q Okay.

6 How did you know that prior to

7 Allison questioning you about it?

8 A The subject had come up many
9 times before.

10 Q In your practice with others?

11 A Yes, yes.

12 Q When it had come up before, had
13 you looked into it?

14 A Yes. I've done a lot of work on
15 medication and its safety for pregnancy.

16 Q What type of work?

17 A Regarding drugs and medications
18 that are commonly prescribed for women
19 during pregnancy and birth.

20 Q When you say you've done work on
21 it, what do you mean by you've done work?

22 A I was involved in giving
23 testimony a number of times regarding the
24 safety of medications that were given to
25 women primarily during the labor process.

September 30, 2019

90

1 J. Breen

2 Q Okay.

3 And had you done research with
4 regard to that?

5 A Yes.

6 Q Okay.

7 And so do you recall specific
8 times that you did research regarding the
9 flu vaccine and pregnant women?

10 A No.

11 Q Just because you don't recall a
12 specific time, does that mean you did not
13 do it or you just don't remember when?

14 A I just don't remember when.

15 Q Do you believe you were
16 informed -- that you had done research
17 prior to first meeting with Allison?

18 A Yes.

19 Q So when she asked your opinion,
20 did you do further research or was that
21 opinion based on your prior research or did
22 you do additional research?

23 A Both.

24 Q Okay, both meaning what?

25 A You know, I was -- I know I had

1 J. Breen
2 done research prior to this, but, you know,
3 because this was a special situation where
4 her employer was going to fire her if she
5 didn't do it, I wanted to be crystal clear
6 to see what was in the package insert.

7 Q Okay.

8 And when you say you wanted to
9 be crystal clear, is that when you sought
10 out the package insert?

11 A Yes.

12 Q And you testified earlier that
13 you -- well, I want to understand your
14 testimony.

15 Were you testifying that you
16 remember for certain that you received it
17 from the pharmacist or that you received it
18 online? Which one? And if you don't
19 remember and it could be either, let us
20 know that, too.

21 A I did both.

22 Q So you did speak with a
23 pharmacist at CVS?

24 A At CVS, I didn't speak with a
25 pharmacist. I asked the pharmacist for the

1 J. Breen

2 was done on the influenza vaccine at that
3 time and its effect on pregnancy and fetus.

4 Q At or around the time you were
5 speaking with Allison about this, did you
6 search for any studies regarding the effect
7 of the flu vaccine on pregnant women?

8 A Prior to, prior to that I had
9 done research.

10 Q Okay.
11 And you had -- and in your prior
12 research did you come to the conclusion
13 that there was no such research,
14 specifically about the effect of the flu
15 vaccine on pregnant women?

16 Do you need me to ask the
17 question again?

18 A Yes.

19 Q So my question is, prior to
20 meeting with Allison, what if any research
21 did you uncover regarding the efficacy or
22 safety of the flu vaccine on pregnant
23 women?

24 A It was my understanding there
25 was no research that was done on pregnancy.

1 J. Breen

2 I can't remember. I really can't remember.

3 It was my understanding that it was not
4 safe.

5 Q Do you recall how you came to
6 that understanding?

7 A Because it's almost common
8 knowledge that there's nothing proven to be
9 safe for the pregnant women or the fetus.

10 Q Is this something that you
11 discussed with Allison?

12 A Allison already understood that.

13 Q Okay.

14 When you say Allison understood
15 that, you mean she expressed that opinion
16 to you?

17 A It was her desire not to take
18 the flu vaccine.

19 Q Okay.

20 Did she tell you why she desired
21 not to take the flu vaccine?

22 A She wanted a natural pregnancy,
23 that's why she came to me and that's why
24 she wanted to plan a home birth, because
25 she wanted things to be as natural as

1 J. Breen

2 opinion.

3 Q So when you discussed the
4 situation in general with Allison, you had
5 told her that you saw no advantage in her
6 taking the flu vaccine, is that correct?

7 A Probably -- my discussion was
8 that the disadvantages outweighed any
9 advantage.

10 Q Okay.

11 Can you explain why you have
12 come to that conclusion?

13 A Because there's no health
14 advantage to taking a vaccine that's not
15 proven to be effective. So the
16 disadvantage would, you know, far outweigh
17 the advantages.

18 Q Do you know whether or not the
19 CDC agrees with that opinion?

20 A The CDC recommends that
21 everybody in the world gets the influenza
22 vaccine to protect the public health, even
23 though the efficacy rate is between 11 and
24 43 percent in a given year. It's always a
25 guess whether it's going to be effective or

1 J. Breen

2 not.

3 Q What do you mean by that?

4 A Because the influenza vaccine is
5 manufactured before the virus comes to this
6 country from Asia. So it's a guess what
7 strain it's going to be, is going to come,
8 and, you know, what the vaccine they're
9 making in advance of that is actually going
10 to be helpful.

11 Q And is that something that you
12 discussed with Allison prior to -- well, in
13 your conversations with her?

14 A No.

15 Q Why do you say no?

16 A Because Allison already knew she
17 didn't want to take the flu vaccine. She
18 knew she was required to take it.

19 In my opinion, my expert
20 opinion, there was no health advantage and
21 only disadvantages to her and the baby by
22 taking the flu vaccine.

23 Q Other than what you told us
24 already, can you explain to us any further
25 about how you've come to that conclusion?

1 J. Breen

2 I just want to make sure we have a full
3 understanding of why your opinion is that
4 the disadvantages outweigh the advantages
5 of a pregnant woman taking the flu vaccine.

6 A Because of the research that
7 I've done on vaccines, in general.

8 Q So you testified previously that
9 you had done research specifically
10 regarding the flu vaccine. Are you now
11 saying that you have also done research
12 about vaccines, in general?

13 A I've done work on vaccines, in
14 general, and the flu vaccine enters into
15 it, is included in that.

16 Q When you say you've done work,
17 because you've used that term a number of
18 times, what do you mean by you've done
19 work, that you've researched and read
20 journals and papers, is that what you mean
21 by done work?

22 A Yes.

23 Q Okay.

24 Is that something you've done
25 throughout your career?

September 30, 2019

104

1 J. Breen

2 A No, no.

3 Q Okay.

4 Could you do that or would you
5 have to --

6 A You can. You can.

7 Q My question is, can you practice
8 nursing or would you have to have that
9 license renewed in some way prior to doing
10 that? I'm just curious.

11 A No. It depends on what capacity
12 you were working. You know, if you worked
13 for a hospital, I mean, you know, a doctor
14 was also a nurse, you know, you could
15 practice as a doctor.

16 Q Other than what you've told us
17 about already, do you have any other formal
18 education, other than what we talked about?

19 I'm just wondering if you take
20 any other courses or classes or
21 certifications or license. I want to
22 understand the full nature.

23 A No, not really. I've taken a
24 lot of courses, but I don't think I've been
25 certified in anything other than child

1 J. Breen

2 birth education.

3 Q And this issue regarding the flu
4 vaccine, do you recall approximately how
5 many times you discussed it with Allison?

6 A I think it only came up a couple
7 of times and then she was fired and that
8 was the end of the discussion.

9 Q When you say it came up a few
10 times, you believe you discussed it with
11 her a few times?

12 A Oh, yes.

13 Q Was that in person, on the
14 phone, or a combination?

15 A It was probably in person. I
16 don't think it was on the phone. I don't
17 recall.

18 Q Would all of those conversations
19 necessarily appear in your notes or is it
20 possible you had conversations with her
21 that don't appear in the notes?

22 A Oh, yeah. What's in the notes
23 is just, you know, just a few lines. But I
24 give my patients an hour, an hour and a
25 half, during our visit. So we talk about a

1 J. Breen

2 lot of things. But that I don't document.

3 Q So during your conversations
4 with Allison, you believe that you
5 expressed to her your opinion that she
6 should not take the flu vaccine, is that
7 accurate?

8 A No. I mean, I reaffirmed her
9 decision not to take the flu vaccine.

10 Q What do you mean by you
11 reaffirmed that decision?

12 A I supported her with her
13 decision not to take the flu vaccine
14 because I also thought it could be harmful.

15 Q So your reaffirmation of her
16 decision that she did not want to take it,
17 was that because she didn't want to take it
18 or was that because of your professional
19 beliefs about the flu vaccine and its
20 possible benefits versus harm?

21 A Both.

22 Q Both. What do you mean by that?

23 A Well, you know, midwives work
24 with patients and their care. So if the
25 patient wants something, as long as it's